

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-011704

09/09/2011

HONORABLE JANET E. BARTON

CLERK OF THE COURT
A. Gonzalez
Deputy

STATE OF ARIZONA

VINCE H IMBORDINO
JOHN F BEATTY

v.

DAVID LAMAR ANTHONY (A)

BILLY L LITTLE JR.
STEPHEN J WHELIHAN

CAPITAL CASE MANAGER
COURT CLINICAL LIAISON
VICTIM SERVICES DIV-CA-CCC

HEARING / RULINGS / MATTERS TAKEN UNDER ADVISEMENT
CAPITAL CASE

Defendant's exhibits 1 through 17 are marked for identification.

8:41 a.m. This is the time set for Trial Management Conference and hearing re Defendant's Motion to Reconsider 3rd Party Defense.

State's Attorney:	Vince H. Imbordino, John F. Beatty
Defendant's Attorney:	Billy L. Little, Jr., Stephen J. Whelihan
Defendant:	Present
Court Reporter:	Treva Colwell

Upon request of the state, the scope of the hearing is clarified. Defendant may present argument that he has additional evidence to present regarding a Motion for Third Party Defense that was not presented to Judge Galati in February 2002.

The court will allow defendant to argue whether he has such new evidence.

Defendant's exhibits 4 and 14 are admitted in evidence.

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Over “cumulative” objection by the state, defendant’s exhibit 18, a copy of the PowerPoint used during defense counsel’s arguments, is admitted in evidence for purposes of the record on appeal.

Before any witnesses are called, legal arguments are presented with respect to the issue of reconsideration only.

IT IS ORDERED granting Defendant’s Motion to Reconsider 3rd Party Defense. In the court’s opinion the prior ruling is based on an incorrect legal standard. The court finds that additional evidence has been presented to support a third party defense. The court finds that under the case law, including *State v. Machado* 224 Ariz. 343, 230 P.3d 1158 (App. 2010) and an analysis per Rules 401, 402 and 403, Ariz.R.Crim.P., reconsideration is both warranted and appropriate.

Having granted reconsideration, evidence is presented re defendant’s motion for a third party defense.

Defendant’s witness, Detective Douglas is present, but his Report, admitted without objection (exhibit 13) is submitted in lieu of testimony and Det. Douglas is free to leave.

Retired MCSO Officer James Oliver is sworn and testifies.

Defendant’s exhibit 12 is admitted in evidence.

The witness is excused.

Defendant’s exhibits 11 and 6 are admitted in evidence.

Defendant subpoenaed Rosemarie Hernandez, but she has not appeared this date. Defense counsel do not request that she be brought to testify forcibly as her statements are memorialized in exhibits admitted at this proceeding.

THE COURT FINDS that based on the applicable case law and Rules 401, 402 and 403, defendant has established that he can present evidence that would create reasonable doubt as to defendant’s guilt. The evidence presented does not constitute “strands of speculation” as argued by the state. For this and for all of the reasons set forth on the record,

IT IS ORDERED granting defendant’s Motion for Third Party Defense.

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Finally, arguments are presented as to the specific evidence to be allowed, see items proposed by the defendant in defendant's Reply to State's Response to Defendant's Motion to Reconsider Ruling on Third Party Defense nos. 1 through 11.

The court takes the matter of those specific items to be allowed under advisement and will issue a detailed ruling later.

Regarding additional testing of items by the state, the state may file a Notice of Supplemental Disclosure (even though the deadline for disclosure has passed). Some testing results have been disclosed, but not all.

IT IS ORDERED affirming the Trial Management Conference and hearing re pending motions on October 7, 2011, at 8:30 a.m. 3.5 hours in this division.

IT IS FURTHER ORDERED affirming the Trial date of May 21, 2012, at 9:30 a.m. in this division.

Previous custody orders and LAST DAY: 4/7/2012 are affirmed.

10:28 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.